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International Work Group for Indigenous Affairs

International Work Group for Indigenous Affairs and Tebtebba Foundation

Summary

The present document consists of two sections. The first contains information provided by the International Work Group for Indigenous Affairs, on behalf of the NGO Forum on Cambodia, on the situation regarding lands, territories and natural resources issues vis-à-vis indigenous communities in Cambodia, including recommendations to the Permanent Forum on how to address them. The second contains a summary and the recommendations of the Asia Regional Conference on indigenous peoples and communal land held in Kompong Cham, Cambodia, from 14 to 16 February 2007, provided by the International Work Group for Indigenous Affairs and the Tebtebba Foundation.

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I. Information from the International Work Group for Indigenous Affairs

A. Introduction

1. Empirical research suggests that the number of indigenous peoples in Cambodia is around 190,000, or 1.4 per cent of the total population. The 1998 Cambodian population census identified 17 different indigenous peoples. Compared to its neighbours in South-East Asia, Cambodia has the smallest population of indigenous peoples, both relatively and in absolute numbers. The country's ethnic Khmer majority accounts for approximately 90 per cent of the population.

B. Illegal alienation of land from indigenous communities

2. Despite the favourable regulations for indigenous communities in the 2001 Land Law, the lack of implementation and enforcement has left indigenous peoples vulnerable to commercial and State interests, which are increasingly attracted to exploiting the economic potential of the forests and upland areas traditionally used and managed by indigenous communities.

3. Road development continues to have a serious impact on indigenous communities. Massive land seizure has been witnessed during the construction of roads linking Mondol Kiri Province to Ratanakiri Province, and Kratie Province to Stung Treng Province. News of planned road development to be funded by the World Bank in Preah Vihear Province has led to increased seizure of land in Kui communities by outsiders.

4. The trading of land has also involved many indigenous persons who have been corrupted by an environment of self-interest. People in government have been deeply involved in these illegal land deals as buyers, sellers, approvers and brokers.

5. Indigenous peoples' attempts to tackle land grabbing have been frustrated by the courts and many in Government. In a notable case in Aikapeap commune in Ratanakiri Province, a court upheld the seizure of land belonging to a Tampuen community. There are allegations of the involvement of high-ranking government officials in the transaction of land to transform it into a rubber plantation.

6. In February 2007, those issues were raised in a national workshop, which was attended by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. The situation is now critical and urgently requires attention.

C. Land concessions

7. Economic land concessions for the development of plantations were granted on indigenous communities' land or land they use in Kratie, Stung Treng, Oddar Meanchey, Siem Reap, Preah Vihear, Ratanakiri, Mondol Kiri, and Kompong Thom Provinces.

8. Wuzhishan, a Chinese company, continues work on a large pine plantation in Mondol Kiri Province on land belonging to Punong communities. The Special Representative of the Secretary-General on the situation of human rights in Cambodia called for the cancellation of the land concession in his statement of 5 July 2005. Another Chinese company, New Cosmos, continues to exploit a tourism concession in an area sacred to the Suoy people in Kompong Speu Province, despite local resistance.

9. In many areas, indigenous communities are being told by government officials and business people that they will have their lands taken for social, mining or tourism concessions, or for other reasons. They are allegedly told that it is better for them to sell their land illegally now rather than have it taken in the future with no income at all.

D. Mining

10. In Cambodia, the 2001 Land Law provides little or no protection to indigenous peoples with regard to mining concessions. This is a great concern, especially as there has been a significant acceleration of the idea that indigenous peoples' land must be industrialized "in the national interest". Without any control of mining, the provisions in the law related to indigenous peoples' lands would be meaningless.

11. In 2006, the Government announced that 100,000 hectares of land were being granted to Japanese and Australian companies for mineral exploitation in north-eastern Cambodia. It should be noted that existing mining concessions on indigenous communities' land in Ratanakiri, Preah Vihear and other provinces were issued without the prior consent of indigenous peoples. In Stung Treng, the development of an iron mine on indigenous land has recently slowed. All concessions have been granted with the absence of free, prior and informed consent.

E. Forestry issues

12. In January 2002, the Government of Cambodia imposed a moratorium on logging in forest concessions. However, it has now begun to allocate logging areas to companies for annual harvesting rights, in some cases in areas used by indigenous communities. One annual coupe was granted in an area in Ratanakiri Province. Logging was approved without adequate consultation with indigenous communities residing in and around the allocated forest area. Investigations found significant departures from plans and standards. In some areas of Kratie, Mondol Kiri and Preah Vihear Provinces, indigenous communities patrol forest areas themselves because the official structures have proved ineffective.

F. Land title registration

13. The 2001 Land Law includes a chapter on the registration of communal lands of indigenous communities, providing a mechanism to safeguard indigenous communities' land in the form of communal land titles. However, no such titles have yet been granted.

14. In the indigenous people land policy currently being drafted, there have been attempts to place limits on the amount of "spirit forest" and "cemetery forest" allowable in communal land titles in the future. Such attempts are clearly against the 2001 Land Law, which states that the boundaries of indigenous peoples' lands are those agreed upon by the communities themselves.

G. Hydroelectric dams

15. Enormous problems have been reported since mid-1996 as a result of hydropower dams located on the Sesan River in Viet Nam, which flows through Ratanakiri and Stung Treng Provinces in the north-east of Cambodia. Many of the communities located along the river are indigenous.

16. While these problems persist, they are likely to be exacerbated by more dams that have already been commenced or are being planned in Viet Nam and the Lao People's Democratic Republic on the Sesan, Srepok, Sekong and Mekong Rivers. International donor agencies and multilateral banks continue to support and validate their construction by fostering associated projects, such as power-line construction and funding feasibility studies.

H. Security of community people protecting their rights

17. A cause for increasing concern is the number of indigenous and non-indigenous activists being arrested, often illegally, for resistance to land and forest alienation attempts by wealthy and powerful people or companies. Cases in several provinces have shown how this has played a role in targeted intimidation against indigenous activists who have had to resort to non-violent protest in attempts to have forest and land issues addressed.

I. Understanding of indigenous issues in Cambodia

18. Most Cambodians are generally not aware of indigenous peoples' rights or culture. The same can be said for the majority of people working for United Nations agencies. Education programmes within the United Nations and in Cambodian society generally are urgently required.

J. Recommendations

Land

19. **The United Nations Permanent Forum on Indigenous Issues should urge United Nations agencies, the World Bank, the Asian Development Bank and bilateral donors to work with the Government of Cambodia to develop a commitment to addressing land issues, by:**

- **Implementing a clear and concise programme of information for States to the effect that the sale or trade of indigenous community land is contrary to the 2001 Land Law; that the lands will not be taken for concessions;**

and that land acquired from indigenous communities subsequent to the 2001 Land Law will not recognized.

- **Issuing clear directives and rules to commune councils that the approval of land sales in indigenous peoples' areas is contrary to the 2001 Land Law.**

20. **The Permanent Forum should establish an independent investigation into the alleged abuse of indigenous peoples' land rights through illegal land alienation, and the issuance of land, forestry, tourism and mining concessions. The investigation should establish:**

- **Recommendations on how the rights of indigenous peoples can be legally protected.**
- **The degree to which the Government of Cambodia ensured free, prior and informed consent of indigenous peoples in decisions to approve land concessions and mining exploration licences for traditional lands and forests of indigenous peoples.**
- **The role of other States in the promotion of agribusiness and extractive industries in the north-east of Cambodia without the free prior and informed consent of indigenous peoples.**
- **The role of multinational agribusiness and extractive industries in the north-east of Cambodia and whether corporate social responsibilities have been fulfilled.**

Forestry issues

21. **The Permanent Forum should urge the World Bank to follow through with the specific actions that were identified in its Management Report and Recommendations in Response to the Inspection Panel report of May 2006, including the withdrawal of all existing logging concessions and the promotion of more equitable and sustainable alternatives of forest management.**

Hydroelectric dams

22. **The Permanent Forum should express its deep concern to the Government of Cambodia and the Government of Viet Nam at the undermining of the rights of indigenous peoples that hydroelectric dams represent.**

Security of community people protecting their rights

23. **The Permanent Forum should recommend to the Office of the United Nations High Commissioner for Human Rights and the Government of Cambodia to establish a monitoring mechanism for reporting to the international community the treatment of indigenous peoples attempting to protect their resource rights.**

II. Information from the International Work Group for Indigenous Affairs and the Tebtebba Foundation

Summary and recommendations of the Asia Regional Conference on indigenous peoples and communal land

24. From 14 to 16 February 2006, a total of 95 indigenous representatives from Bangladesh, Cambodia, India, Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, Myanmar, Nepal, the Philippines, Thailand and Viet Nam gathered in Kompong Cham, Cambodia, to attend the Asia Regional Conference on indigenous peoples and communal land. The Conference was organized by the Asia Indigenous Peoples Pact and NGO Forum on Cambodia, with the support of the International Work Group for Indigenous Affairs and the European Commission.

25. The participants were brought together by their shared concern over the lack of recognition of communal land rights in many Asian countries, the rapid loss of land, and the erosion of traditional communal land tenure, use and management systems in indigenous communities across the region. Indigenous communities identify themselves strongly with their territory. Their relationship to land has not only a pronounced communal, but also an inter-generational, character, and their relationship to land is multidimensional: economic, social, cultural and spiritual. In her working paper (E/CN.4/Sub.2/2001/21), the Special Rapporteur noted that the gradual deterioration of indigenous societies could be traced to the non-recognition of the profound relationship that indigenous peoples have to their lands, territories and resources.

A. The common picture

26. Across Asia, indigenous peoples are being deprived of their land and resources. The process began during the colonial era, but continued under post-colonial independent nations. Land classification systems and basic legal concepts, like that of eminent domain, whereby the State claims ownership over vast areas of land, were introduced by the colonial powers and are still enshrined in the Constitution of many Asian States. In the process, the presence of indigenous peoples and their customary land rights and management systems were and continue to be ignored. In those cases where customary rights are legally recognized, the implementation and enforcement of the respective laws and policies are generally weak, often hindered by contradicting legislations and sometimes altogether absent as a result of intervening powerful vested interests.

27. A critical stand against large-scale resource and land appropriation by the State and private companies is usually branded as anti-development and anti-national, and indigenous peoples' resistance to dispossession is often met with harassment, if not violent repression, by State security forces. As a result, some indigenous areas in South and South-East Asia are among the most heavily militarized regions in the world.

28. State laws and policies in Asia clearly favour private land ownership and corporate interests over communal land ownership and the well-being of indigenous communities. After decades of logging in indigenous peoples' forests, exploitation of resources on indigenous territories is currently focusing on mining and large-

scale commercial plantations for the production of, inter alia, rubber, cashew nuts, cassava or oil palm. While the demarcation and registration of indigenous communities' land — in countries where legal provisions for them actually exist — is usually a long, complicated and expensive process, Governments are very forthcoming in issuing logging, plantation and mining concessions for vast areas inhabited by indigenous communities. With few exceptions, attempts to seek legal recourse are frustrated because the judiciary in some Asian countries is still not independent, judges are insensitive and biased, or legal procedures are prohibitively expensive for poor indigenous communities.

B. The challenges

29. In defence of their land and resources, indigenous communities are facing enormous challenges.

30. On the legal front, indigenous peoples in most Asian countries still have to fight for both their recognition as indigenous peoples and the recognition of communal land rights. They are usually confronted with a biased and corrupt judiciary, State administration and security apparatus, which often enjoy impunity.

31. On the political front, they are confronted with often violent repression of their attempts to organize themselves, and with corruption, intimidation, harassment or even the killing of their leaders. Their customary laws and institutions, including traditional leaders and councils, are not recognized and the State political-administrative system is imposed on them, thus undermining their own socio-political organization.

32. The knowledge, capacity, skills and financial resources needed for an effective engagement with the State political and judicial system, and for effective networking and mobilization in defence of their rights, are in most indigenous communities largely absent. Many also do not know how to engage with private companies or how to use the international legal instruments available.

33. Lack of self-confidence, cultural assimilation pressure, mainstream education, youth migration, proselytizing and other external forces are weakening existing customary institutions and are dividing the communities and generations, thus breaking down the unity of indigenous communities and peoples.

34. Increasing cash needs and integration into the market economy without the capacity to explore culturally, socially and ecologically appropriate alternatives in economic development force indigenous communities to engage in unsustainable land-use practices and a development process that increases economic dependence.

C. Recommendations

35. In order to overcome the above-mentioned challenges in their struggle for the recognition of their communal land and resource rights, the participants in the Conference adopted the following recommendations addressed to United Nations and government agencies, and non-governmental and indigenous peoples' organizations.

(a) Local level

Empowerment

Promote and support self-organizing and self-empowerment of indigenous communities and networking for mutual support and protection by:

- **Raising awareness on existing laws and international human and indigenous rights instruments.**
- **Encouraging and supporting indigenous communities to make use of the national legal system and international instruments to protect their rights.**
- **Leadership training.**
- **Economic empowerment through exchange and mutual learning.**
- **Community mapping involving elders to solve land conflicts.**
- **Applying gender-sensitive approaches in all strategies for safeguarding indigenous peoples' control over land and resources.**

Customary law

- **Continue, revitalize and review traditional systems, customs and practices to adapt them to changing conditions and needs.**
- **Document indigenous peoples' customary laws and land and resource management systems.**

(b) National level

Awareness-raising

- **Engage and educate the media for systematic and sustained awareness-raising of the general public, Governments, legislators and private companies about indigenous peoples' issues.**
- **Engage communities directly in awareness-raising and education initiatives on indigenous peoples' issues.**

Laws, policies and their implementation

Promote and call for:

- **The constitutional and legal recognition of indigenous peoples.**
- **Legal reform, in particular with regard to the recognition of indigenous peoples' communal land rights, and the exploration of possibilities for alternative legal paradigms that are compatible with and recognize indigenous peoples' customary laws and institutions.**
- **National laws to conform with international laws.**
- **The establishment of land commissions that address violations of indigenous peoples' land rights, facilitate the restitution of alienated land and settle disputes.**
- **Legal provisions ensuring the inclusion of indigenous representatives in political decision-making bodies, for example the allocation of seats for**

indigenous representatives in parliaments, senates or other legislative bodies of the State.

- Donor policies on indigenous peoples to be applied in order to achieve legal and policy changes.
- The adoption of laws controlling investor activities and mitigating the negative impact of economic liberalization on indigenous peoples' territories.
- Full transparency in projects on indigenous territories by Governments and corporations, namely, the implementation of the principles and mechanisms of free, prior and informed consent, including the provision of information in a timely and appropriate manner, and in accordance with customary laws and practices of the respective indigenous peoples.
- The complete abandonment of transmigration policies and programmes, and the prevention of illegal migration to indigenous peoples' territories.
- The broadening of the mandate of national human rights commissions to fight violations of the rights of indigenous peoples.

Lobbying, advocacy and networking

Promote and support:

- The formation and strengthening of existing national networks and alliances among indigenous communities and their organizations for advocacy, mutual support and protection.
- Indigenous peoples' engagement with the Government to learn about procedures, mechanisms and tactics.
- Pilot projects demonstrating effective communal land management, with which to lobby the authorities.
- The use of environmental conservation discourse, laws and instruments, such as the Convention on Biological Diversity, to promote the rights of indigenous people to land and resources.
- Governments and the general public to value indigenous knowledge on natural resource management.

(c) International level

Lobbying, advocacy and networking

Promote and support:

- The use of international instruments and the promotion of indigenous peoples' rights, in particular the recognition of communal land rights.
- International campaigns and networking initiatives on indigenous peoples' land rights.
- The strengthening of existing networks and alliances of indigenous peoples' organizations in Asia and their organizations for advocacy, mutual support and protection.

- **Studies and campaigns on the principle of eminent domain as a continuation of colonial practices in present-day independent nations.**
- **Campaigns against large-scale commercial plantations, mining and mega-dams on indigenous territories.**
- **A discourse on development alternatives among indigenous peoples.**

Laws, policies and their implementation

Promote and support:

- **The development and proper implementation of policies on indigenous peoples by the European Union, United Nations agencies, the World Bank and the Asian Development Bank.**
- **A common policy for development agencies, giving priority to the recognition and protection of land rights and resource rights as a precondition for achieving the Millennium Development Goals for indigenous peoples.**